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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

PRESTON THOMAS HARRIS et al., Plaintiffs and Appellants, v. SAVE THE QUEEN, Defendant and Respondent.	B236774 (Los Angeles County Super. Ct. No. BC438196)

APPEAL from a judgment of the Superior Court of Los Angeles County. William F. Highberger, Judge. Affirmed.

Law Offices of A. George Glasco and A. George Glasco for Plaintiffs and Appellants.

Jeffer, Mangels, Butler & Mitchell, Matthew D. Hinks and Andrew I. Shadoff for Defendant and Respondent.

* * * * * *

Plaintiffs and appellants Preston Thomas Harris, Kenneth Williams and Lanny Thomas, on behalf of themselves and others similarly situated, and Rarebreed Motorcycle Club, Inc. (sometimes collectively appellants) filed an action alleging contract, tort and statutory claims against Save the Queen, LLC (STQ) after they unsuccessfully attempted to hold an annual event at the Queen Mary and adjacent facilities. The trial court granted summary judgment, finding the undisputed evidence established that STQ neither breached the contract nor discriminated against appellants when it sought an increased deposit to cover security and other expenses after appellants tripled their attendance estimate days before the event. We affirm. The undisputed evidence showed that STQ acted reasonably in the face of appellants' own failure to comply with certain contractual provisions.

FACTUAL AND PROCEDURAL BACKGROUND

The Parties.

Appellant Rarebreed Motorcycle Club, Inc. (Rarebreed) is comprised of approximately 65 members who ride Harley Davidson motorcycles, and its primary purpose is for the members' enjoyment of riding motorcycles together. Appellants Preston Thomas Harris, Kenneth Williams and Lanny Thomas are Rarebreed members and manage the group as its chief financial officer, president and secretary, respectively. At all relevant times, Rarebreed's membership was comprised solely of African-Americans.

Though Rarebreed obtains revenue from member dues, special events and fundraisers, it derives its main source of revenue from an annual anniversary event held each June. Shootings occurred at Rarebreed's 2007 and 2008 anniversary events, and an earlier shooting had occurred at the grand opening of Rarebreed's clubhouse in 2004. During Rarebreed's 2008 picnic in San Pedro, the Los Angeles Police Department maintained a heavy presence by establishing a command post, dispatching a police helicopter and blocking streets to give members direct freeway access to exit the area.

STQ operates the Queen Mary pursuant to a lease with the City of Long Beach (City). It operates a hotel on the ship, hosts special events and leases the facilities—including an events park and the Spruce Goose dome—to others for private events.

Rarebreed's 2009 Anniversary Event.

Though Rarebreed considered hiring an event planner to plan its 2009 anniversary event for its 20-year anniversary, ultimately Harris, Thomas and Williams planned the event.

The Agreement.

In early 2009, appellants approached STQ about holding Rarebreed's 20-year anniversary event at the Queen Mary. They intended to hold a daytime picnic at the park from 11:00 a.m. to 6:00 p.m., and a dance with entertainment at the Spruce Goose dome during the evening from 8:00 p.m. to 2:00 a.m. On March 16, 2009, STQ and Rarebreed entered into a special events agreement (Agreement) for the lease of certain facilities around the Queen Mary for Rarebreed's anniversary event to be held on June 27, 2009 (Event). The Agreement provided that Rarebreed would pay STQ a $5,000 rental fee, a $2,000 cleaning fee and a $1,000 refundable damage deposit. STQ also anticipated earning revenue through hotel room rentals and the sale of food and beverages to attendees.

The Agreement required Rarebreed to provide a "detailed event plan" and to "submit[] an estimated number of people attending the event" at least 67 days before the Event. It further provided that Rarebreed was responsible for "obtain[ing] all permits, if necessary, including but not limited to alcohol, fire, health, tent, liquid storage, and assembly, for the above described Event, at no cost to STQ." According to the Agreement, Rarebreed was responsible for both the "costs of additional staffing by the Long Beach Police Department deemed necessary by the City of Long Beach Office of Special Events" and the cost of private event security over and above any police detail. The Agreement gave STQ the exclusive right to provide security for the Event and obligated Rarebreed to "pay STQ at the rate of $25 per hour per officer." STQ's general

practice, communicated to Rarebreed, was that it required one security officer for every 100 attendees.

Event Planning and Permitting.

The Event was open to the public and appellants anticipated that members from other clubs would attend. It was common for Rarebreed's anniversary events to draw 3,000 to 5,000 attendees, and its 2008 anniversary event drew as many as 6,000 attendees. Though appellants had initially intended to presell tickets, they ultimately determined that all ticket sales would occur at the gate on the day of the Event. Appellants contracted with two popular music entertainers, E-40 and Too Short, to provide entertainment for the Event. They planned to advertise the Event on the radio, and they printed and distributed between 6,000 and 7,000 flyers advertising the Event. Nonetheless, at about the time the Agreement was executed, Harris represented to STQ that he anticipated approximately 2,000 attendees at the Event.

Though the Agreement obligated Rarebreed to obtain all necessary permits for the Event, STQ assisted Rarebreed with the permitting process by compiling and submitting materials to each responsible City department. STQ provided Harris with a blank City permit application for him to complete and return. The application indicated that Long Beach Municipal Code Chapter 5.60 provided the framework for the issuance of special events permits within the City, and directed applicants to a Web site where the code provisions could be viewed. Pertinent here, Long Beach Municipal Code section 5.60.090(A) provides: "In addition to the payment of the nonrefundable permit application fee or daily fee, a permitee shall pay the city for all city departmental service charges incurred in connection with or due to the permitee's activities under the permit unless said departmental service charges are funded, partially funded or waived by action of the city council." In addition, Long Beach Municipal Code section 5.60.090(D) provides: "Unless otherwise authorized by the city manager in writing, at least three (3) days prior to a parade, event or activity permitted under this chapter, the applicant shall pay to the city a deposit in an amount sufficient to cover the total estimated city departmental services charges which the city manager estimates will be incurred in

connection with the permit. Said deposit shall be paid in cash or other adequate security as determined by the city manager."

Without reviewing the referenced Web site, Harris completed a draft permit application and faxed it to STQ on April 9, 2009. Consistent with prior representations, he indicated that Rarebreed anticipated 1,500 to 2,000 attendees at the Event. STQ special events manager Eleni Manukailea reviewed the application and provided comments and suggestions. Harris subsequently typed a final permit application (Permit Application) and forwarded it to STQ; after both Harris and an STQ representative had signed the Permit Application, STQ submitted it to the City. The 1,500 to 2,000 attendee estimate remained unchanged in the Permit Application.

On the basis of Rarebreed's attendance estimate, STQ provided the City with a security plan for 20 security officers during the day and another 20 during the evening, which was consistent with its typical 100 attendee to one security officer ratio. Pursuant to the Agreement, this estimate obligated Rarebreed to pay STQ $6,500, comprised of 20 security guards at $25 per hour for 13 hours.

Attendance Estimates After Permit Application.

Rarebreed advertised the Event through a mailed and hand-distributed flyer, and began receiving responses from individuals interested in attending the Event. After they submitted the Permit Application, appellants had a conversation among themselves in which they determined that their attendance estimate was too low and came to the conclusion that they could fill the site to its 6,000 person capacity. Unaware of this conversation, STQ continued to assist Rarebreed throughout April, May and June 2009 in obtaining additional permits required for the Event. On June 12, 2009 Harris told Manukailea in an e-mail that Rarebreed expected 1,500 to 2,500 attendees at the Event.

It was the City's standard practice to hold a meeting with special event permit applicants before approving an application. The meeting for the Event occurred on June 16, 2009, 11 days prior to the date of the Event. Members of the City's office of special events and filming (OSEF) and Rarebreed and STQ representatives attended. During the meeting, Rarebreed disclosed that it expected as many as 6,000 attendees; the

revised estimate came as a surprise to STQ. During the meeting, the City raised several concerns about the Event which primarily related to the revised attendance estimate. Additional attendees put a strain on the limited parking available on site and required the use of off-site lots and a shuttle, necessitated the use of enhanced security, rendered questionable the plan to sell tickets at the gate, and highlighted concerns about previous violent incidents that had occurred at Rarebreed events. A City police official at the meeting indicated that he had "'done some checks'" and learned that Rarebreed "'events draw large crowds,'" and added the police department had concerns because Rarebreed had no idea how many attendees there could be and security could be compromised if the crowd exceeded capacity. The City required Rarebreed and STQ to resubmit the Permit Application and provide specified additional information before it would issue a permit.

The day after the meeting, STQ received an e-mail from OSEF representative David Ashman summarizing the City's concerns. The same day, Queen Mary general manager Jay Primavera forwarded the Ashman e-mail to Harris and Manukailea, and stated in the e-mail to Harris that in addition to providing the City with additional information and revised plans, Rarebreed would be required to provide STQ with a "cashier's check in the amount of $65,000 made out to the Queen Mary by 9:00 Friday morning." Primavera explained that "[t]his will cover estimated police, fire and security fees only. Police and security costs are the greatest due to the shootings that occurred at [Rarebreed's] event last year." The City had "a tremendous concern about [Rarebreed's] ability to control the amount of people that would be coming to the event since there are no presale tickets."

Primavera based the $65,000 figure on a ballpark estimate provided to him by the City police department. At least one half of that amount was for payment of police officers. Typically, STQ would have waited to receive an invoice from the City before seeking payment from a third party for an event; for other large events, however, STQ had sought payment of a similarly large deposit. In this instance, Ashman was the City representative authorized to set the final fee for the Event, but he never received enough

information to make that determination. Thus, the $65,000 figure had not been specifically directed by the City.

Following Ashman's e-mail, Manukailea met with Thomas and Williams at the Queen Mary to help them revise and supplement the Permit Application. STQ submitted a revised site and security plan to the City utilizing the increased attendance estimate. On June 19, 2009, Ashman sent an e-mail to STQ which outlined numerous issues and concerns the City had with the revised plan. Among the concerns were the increased attendance, the reason for the increased attendance with so little advertising and the lack of a shuttle plan. The e-mail also pointed out a handful of typographical errors in the plan concerning the number of security guards; in some instances the number spelled out did not match the adjacent parenthetical numeral. Ashman gave Rarebreed and STQ a deadline of June 20, 2009 at 11:00 a.m. to appear personally at the Queen Mary to provide the City with complete information addressing the identified concerns, and cautioned that without such information the City would be unable to issue the permit.

Also on June 19, 2009, STQ informed Rarebreed that the $65,000 estimate had increased to $70,000; STQ based its increase on information from the City police department that the cost of security would be greater than anticipated.

A Rarebreed representative did not appear at the Queen Mary on June 20, 2009. Rarebreed took no further action to obtain a permit for the Event.

Pleadings and Summary Judgment.

In September 2010, appellants filed the operative first amended complaint against STQ, the County of Los Angeles, the Los Angeles County Sheriff's Department and the City of Long Beach, alleging causes of action for intentional and negligent infliction of emotional distress, nuisance, intentional interference with contract, breach of contract, race discrimination in violation of Civil Code section 51, breach of the implied covenant of good faith and fair dealing and unfair business practices in violation of Business and Professions Code section 17200; only the latter four claims were alleged against STQ. They generally alleged that STQ had breached the Agreement and treated them differently than similarly-situated organizations by unjustifiably and belatedly increasing

their deposit. They sought damages and injunctive relief. STQ answered, generally denying the allegations and asserting multiple affirmative defenses.

In March 2011, STQ moved for summary judgment, asserting there was no triable issue of fact concerning whether appellants were denied use of the Queen Mary on the basis of a prohibited classification. In support of its motion, STQ submitted the declarations of staff members involved with the Agreement, copies of draft and final agreements and permits associated with the Event, copies of e-mails regarding the Event and deposition excerpts.

Appellants opposed the motion, asserting there were triable issues of fact as to whether STQ had frustrated and impeded their obtaining a City permit for the Event and whether STQ's demand for $70,000 up front was unwarranted and unprecedented. They submitted their own declarations and deposition excerpts in support of their opposition. The trial court overruled STQ's evidentiary objections.

After taking the matter under submission at the conclusion of an August 3, 2011 hearing, the trial court granted the motion. Relevant to the causes of action challenged on appeal, the trial court ruled: "Plaintiffs depict this increase in the deposit estimate as breach of contract (and evidence of racial bias). The undisputed facts do not support this conclusion. Planning of such an event in a triangular relationship between the event sponsor, STQ and the city is a necessarily complicated, multi-step and relatively slow process. The contract appropriately required 67 days advance notice of the headcount and resulting logistics. Plaintiffs first breached their obligation under the contract (on or before June 16) by delaying disclosure of the new headcount (while circulating 5,000 or more pieces of marketing material) and attempting belatedly to triple the headcount which had been used up to then for planning purposes. Rather than rejecting their business entirely at that time, STQ and the city attempted to work with plaintiffs in the short time available. [¶] Plaintiffs were entirely unjustified in interpreting the upward adjustment of the required deposit by less than 8% as some indicia of breach of contract by STQ. A normal planning time of 67 days had been compressed into mere hours. That

a first estimate would change as data came in from city agencies such as the Long Beach Police Department is entirely reasonable."

The trial court entered judgment in favor of STQ in August 2001, and this appeal followed.

DISCUSSION

Appellants contend that triable issues of material fact precluded summary judgment. Their challenge is limited to the causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing and violation of Business and Professions Code section 17200; they do not challenge summary judgment on the sixth cause of action alleging civil rights violations (Civ. Code, § 51). We find no basis to disturb the judgment.

I. Summary Judgment Standard of Review.

Summary judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . ." (Code Civ. Proc., § 437c, subd. (c).) A defendant "moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) To satisfy this burden, a moving defendant is not required to "conclusively negate an element of the plaintiff's cause of action." (*Id*. at p. 853.) Rather, the moving defendant bears the initial burden of showing that a cause of action lacks merit because one or more of its elements cannot be established or because it is subject to an affirmative defense. (Code Civ. Proc., § 437c, subd. (o); *Aguilar, supra,* at p. 850.)

Once the moving defendant makes this showing, the burden shifts to the plaintiff to show the existence of a triable issue of material fact, which must be demonstrated through specific facts based on admissible evidence and not merely the allegations of the pleadings. (Code Civ. Proc., § 437c, subd. (p)(2); *Borders Online v. State Bd. of*

Equalization (2005) 129 Cal.App.4th 1179, 1188.) The plaintiff must produce "substantial" responsive evidence sufficient to establish a triable issue of fact. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) "[R]esponsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact." (*Ibid*.)

We review a grant of summary judgment de novo, independently considering the admissible evidence and the uncontradicted inferences reasonably deducible from the evidence, to determine whether the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 404; *Artiglio v. Corning, Inc.* (1998) 18 Cal.4th 604, 612.) "[W]e apply the same three-step analysis used by the superior court. We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue." (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 261.) If we find no triable issue of material fact, "we affirm the summary judgment if it is correct on any legal ground applicable to this case, whether that ground was the legal theory adopted by the trial court or not, and whether it was raised by defendant in the trial court or first addressed on appeal." (*Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1071.)

II. The Trial Court Properly Granted Summary Judgment.

The trial court ruled that the undisputed evidence established that STQ's requested deposit increase was neither a breach of contract nor an unfair business practice. We agree.

A. Breach of Contract.

In its cause of action for breach of contract, Rarebreed, alone, alleged that it "was ready, willing and able to comply in good faith with the AGREEMENT permitting the use of the Queen Mary, the Dome, and other associated sites managed and operated by STQ. Defendant STQ . . . frustrated the purpose and the intent of that AGREEMENT, by the severe and onerous last minute ever-increasing security deposits, e.g., $65,000 initial

. . . and upped one day later to $70,000. In each instance STQ was saying that the CITY OF LONG BEACH (its various sub-body politics) required the said sums on the one hand, while CITY OF LONG BEACH was saying that STQ was requiring this. In short, said Defendant, apparently feeling obligated to bend to the will of the CITY OF LONG BEACH, given that said Defendant held the master lease for the venues covered under the AGREEMENT."

The Agreement obligated Rarebreed to pay STQ $8,000, comprised of a rental fee, cleaning fee and damage deposit. Under the Agreement, Rarebreed was responsible for submitting an estimated number of people attending the Event. It further obligated Rarebreed to obtain all necessary permits and to submit logistical information to STQ no later than 67 days before the Event. This was necessary because STQ was required to submit the Permit Application to the OSEF no later than 60 days before the Event. It also required Rarebreed to pay for the costs of additional staffing by the City police department if deemed necessary by the City and to pay STQ for security, the latter cost to be noted as an addendum to the Agreement.

According to the undisputed evidence, "[t]he city sets the deposit amount for such fees, but STQ staff has experience with the level of extra services required by the city and the typical associated cost." As the trial court concluded, the increase in the deposit resulted from Rarebreed's tripling its attendance estimate well outside the event plan and permitting time periods specified by the Agreement. It concluded that Rarebreed's conduct amounted to a breach of contract and that STQ's efforts to adjust the deposit amount—as opposed to simply cancelling the Event—were a reasonable response to Rarebreed's conduct.

By establishing that Rarebreed breached the Agreement, STQ satisfied its burden on summary judgment either to negate an essential element of Rarebreed's breach of contract claim or to establish an affirmative defense thereto. (Code Civ. Proc., § 437c, subd. (o).) "[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. [Citation.]" (*Oasis*

West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 821.) The undisputed evidence showed that Rarebreed did not fully perform, as it neither secured the necessary permits nor submitted all logistical information within the requisite time period. Alternatively, the undisputed evidence demonstrating Rarebreed's failure to perform excused STQ's performance, thereby establishing a complete defense. (See, e.g., Civ. Code, § 1439 ["Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party"]; *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277 ["When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract"].)

Because STQ met its initial burden on summary judgment, the burden shifted to Rarebreed to demonstrate a triable issue of fact. We find no merit to Rarebreed's efforts to show it met its burden. Initially, Rarebreed argues for the first time on appeal that its belated attendance revision was not a breach of the Agreement, but rather, a new offer that STQ accepted by continuing to work with Rarebreed to finalize the Event. As aptly explained in *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 962: "It is well settled that 'in reviewing a summary judgment, the appellate court must consider only those facts before the trial court, disregarding any new allegations on appeal. [Citation.] Thus, possible theories that were not fully developed or factually presented to the trial court cannot create a "triable issue" on appeal. [Citations.]' [Citations.]" In any event, the undisputed evidence does not support Rarebreed's new theory. According to appellants' own authority, *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 271, "[t]he determination of whether a particular communication constitutes an operative offer, rather than an inoperative step in the preliminary negotiation of a contract, depends upon all the surrounding circumstances. [Citation.] The objective manifestation of the party's assent ordinarily controls, and the pertinent inquiry is whether the individual to whom the communication was made had reason to believe that it was intended as an offer. [Citation.]" Here, there was no evidence offered to suggest that STQ understood

Rarebreed's revised attendance estimate as a new offer or that it manifested its assent to the "offer." Rather, the evidence showed that the revised estimate came as a complete surprise to Manukailea—particularly given that Rarebreed had confirmed its 2,000 attendee estimate five days earlier—and raised multiple concerns with the City that Rarebreed never resolved.

Next, Rarebreed contends that a triable issue of fact existed as to whether STQ breached the Agreement by demanding it pay a $70,000 deposit when such sum was neither specified in the Agreement nor invoiced by the City. The undisputed evidence established that the $70,000 amount did not appear in the Agreement and that the City had not requested STQ to collect that sum from Rarebreed. Nonetheless, the Long Beach Municipal Code required that not less than three days before the Event, STQ "pay to the city a deposit in an amount sufficient to cover the total estimated city departmental services charges which the city manager estimates will be incurred in connection with the permit." The undisputed evidence further established that the Agreement required Rarebreed to pay for both City police department staffing deemed necessary by the City and security guards provided by STQ. From the time it first contacted STQ to five days before the June 17, 2009 planning meeting, Rarebreed consistently maintained that it would have approximately 2,000 attendees at the Event. Thus, all plans, payment estimates and permit requests were based on that figure.

When Rarebreed disclosed just 11 days before the Event that it actually expected 6,000 attendees, both the City and STQ tried to make adjustments to handle the increase. On June 17, 2009, STQ submitted a revised security plan that significantly increased the number of guards and provided for revised security procedures. According to a June 19, 2009 e-mail from the City, it remained unsatisfied with the proposed security plan and with the site, parking and ticketing plans. Against this backdrop, STQ's Primavera contacted the City police department, and on the basis of information obtained from Sergeant Kohagura and his own experience, came up with a figure of $65,000 to cover the anticipated cost of City police, fire and emergency personnel, and STQ security guards necessary to staff the Event. This figure was proportionate to fees charged to

other entities for large events. Thereafter, because the City police department increased its staffing estimate, STQ increased its requested payment by an additional $5,000. The undisputed evidence showed that the Agreement required Rarebreed to pay for public and private security, that STQ's payment estimate was based on information from the City police department and it own past events, and that STQ's request for this payment was necessitated by a municipal code requirement that it make a deposit to the City. Rarebreed offered no evidence to create a triable issue of fact as to whether the $70,000 requested payment constituted a breach of contract.

Finally, Rarebreed contends it established a triable issue of fact as to whether STQ breached the Agreement by submitting a faulty security plan. It was undisputed that typographical errors appeared in the security plan STQ submitted to the City after Rarebreed changed its attendance estimate. In certain instances, the numerical representation of the required security guards did not match the spelled-out number. But a comparison of the security plan STQ submitted in April 2009 with the later plan submitted in June 2009 showed that the differences resulted from incomplete changes to the plan made to increase the number of guards to correspond to the increased attendance estimate. Indeed, STQ made its revisions in less than 24 hours after the June 16, 2009 meeting. The City acknowledged the discrepancy, and Ashman noted in his June 19, 2009 e-mail that the discrepancies "need to be explained or the typos need to be revised." Given that Ashman's comment appeared in the middle of an over-three page e-mail that raised a host of substantive concerns, we decline to infer that the minor typographical errors raised a triable issue of fact that STQ breached the Agreement. (See, e.g., *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1298–1299 [""[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork""].)

B. Breach of the Implied Covenant of Good Faith and Fair Dealing.

Appellants alleged in their seventh cause of action that the Agreement's implied covenant of good faith and fair dealing "required STQ not to discriminate in the leasing

of its facilities on the basis of race, and further required STQ not to recklessly, arbitrarily and capriciously increase the security deposits under the AGREEMENT without any logical or rational reason therefor, and further required STQ not to effect such repetitive increases in the security amounts in such temporal relation that rendered it next to impossible for plaintiff RAREBREED and/or its members to comply."

On appeal, appellants have not provided any independent argument challenging the summary judgment ruling to the extent it related to their claim for breach of the implied covenant of good faith and fair dealing. As a result, any contention of error has been forfeited. (See *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4 [issue not raised on appeal deemed forfeited or waived]; *Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1177 ["failure to address summary adjudication of a claim on appeal constitutes abandonment of that claim"]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 ["[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"]; *Los Angeles Equestrian Center, Inc. v. City of Los Angeles* (1993) 17 Cal.App.4th 432, 450 [summary resolution of causes of action not addressed in appellants' brief upheld because the "failure to discuss the theories on appeal constitutes an abandonment"].)

In any event, we would affirm the trial court's ruling on the merits, as the claim lacks any viable factual basis. Appellants have abandoned their discrimination claim and the allegations regarding the increased security deposit are no different than those supporting Rarebreed's breach of contract claim. As explained in *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395, "[i]f the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated." (Accord, *Bionghi v. Metropolitan Water Dist.* (1999) 70 Cal.App.4th 1358, 1370 [where "claim of breach of the implied covenant relies on the same acts, and seeks the same damages, as its claim for breach of contract," summary

adjudication affirmed on the ground "the cause of action for breach of the implied covenant is duplicative of the cause of action for breach of contract, and may be disregarded"].)

C. Violation of Business and Professions Code Section 17200.

Appellants' eighth cause of action for violation of Business and Professions Code section 17200 (section 17200) relied on the facts pled in their other claims, alleging that STQ engaged in an unfair, unlawful and/or deceptive business practice by "increasing to geometric multiples in short time intervals the amount of security payment required, and further refusing to provide and/or assist in the providing of permits necessary to hold the events at said Queen Mary and the surrounding sites called for in the AGREEMENT . . ." They further alleged that STQ denied appellants use of the facilities on the basis of race.

California's unfair competition law (UCL) "broadly prohibits 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.' ([Bus. & Prof. Code,] § 17200.) . . . 'By proscribing "any unlawful" business practice, "section 17200 'borrows' violations of other laws and treats them as unlawful practices" that the unfair competition law makes independently actionable.' [Citation.]" (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 643–644.) Appellants have not challenged the summary judgment ruling on their cause of action for race discrimination—a claim the trial court found "frivolous on this record." Thus, the entire basis of their section 17200 claim is STQ's asserted breach of contract in requesting a security deposit in an increasing amount and before City confirmation of the amount. "'[A] breach of contract may . . . form the predicate for Section 17200 claims, *provided it also constitutes conduct that is "unlawful, or unfair, or fraudulent.*"' [Citations.]" (*Puentes v. Wells Fargo Home Mortgage, Inc., supra,* at p. 645.)

Appellants do not argue that STQ's conduct was unlawful, but only that it was unfair and fraudulent. """The test of whether a business practice is unfair 'involves an examination of [that practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the gravity of the harm to the alleged

victim . . .'" [Citations.] ". . . . [A]n 'unfair' business practice occurs when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." [Citation.] "In general the 'unfairness' prong 'has been used to enjoin deceptive or sharp practices. . . .'" [Citation.] However, the "unfairness" prong of section 17200 "does not give the courts a general license to review the fairness of contracts . . . ." [Citation.]' [Citation.]" (*Searle v. Wyndham Internat., Inc.* (2002) 102 Cal.App.4th 1327, 1334.)

Here, the undisputed evidence showed that STQ's deposit request was the direct result of appellants' belated attendance estimate revision, which resulted in a host of logistical and security concerns by the City and STQ. While the evidence showed that, typically, the City would provide STQ with the total event fee before STQ would request payment from the event producer, this was not the typical situation. STQ had premised its permit requests and site and security plans on appellants' attendance estimate of 2,000. When appellants sought to triple that figure just days before the Event, STQ contacted the City police department directly and used its own experience with similarly large events to create an appropriate security deposit figure. The undisputed evidence established that STQ's conduct was not unethical or unscrupulous, and was justified by appellants' conduct. (See *Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 598 [Ford's imposition of successive late fees for successive months not an unfair business practice where fees could have been avoided by the plaintiff's timely monthly payments according to the terms of the contract]; *Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1555 [property management company charging document transfer fee to homeowners not an unfair business practice; court rejected argument that fee was not permitted by contract and noted "we are unaware of any statutory or case law that requires a for-profit business to point to a statute or contract that allows it to charge a fee for a service"].)

Nor was there a triable issue of fact as to whether STQ's conduct was fraudulent within the meaning of section 17200. "'Historically, the term "fraudulent," as used in the UCL, has required only a showing that members of the public are likely to be deceived.

[Citation.]' [Citation.]" (*Berryman v. Merit Property Management, Inc., supra,* 152 Cal.App.4th at p. 1556.) Here, appellants contend a triable issue existed as to whether STQ's deposit request was fraudulent because it was designed to suggest that the City—not STQ independently—requested the deposit. The court in *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 838, rejected a similar contention. There, the plaintiff alleged that the defendant engaged in fraudulent conduct in violation of section 17200 by failing to disclose an engine defect that in some cases caused automobile malfunctions long after the expiration of the warranty. (*Daugherty v. American Honda Motor Co., Inc., supra,* at pp. 828, 838.) Given that a buyer's expectation was only that the engine would function properly throughout the warranty period, the court found that the defendant had done nothing likely to deceive: "We cannot agree that a failure to disclose a fact one has no affirmative duty to disclose is 'likely to deceive' anyone within the meaning of the UCL." (*Id.* at p. 838; see also *Berryman v. Merit Property Management, Inc., supra,* at pp. 1556–1557 [failure to disclose breakdown of fees not a fraudulent business practice under § 17200 where property management company owed no duty to disclose those fees to property sellers]; *Searle v. Wyndham Internat., Inc., supra,* 102 Cal.App.4th at p. 1334 [hotel's imposing 17 percent service charge without disclosing to guests that service charge is paid to the servers not a fraudulent business practice, as hotel guests had no right to know what hotel was paying room service servers].) Here, likewise, nothing in the Agreement or the Long Beach Municipal Code gave appellants the right to know or imposed on STQ a duty to disclose the financial arrangement between the City and STQ. Accordingly, STQ's conduct was not fraudulent within the meaning of section 17200.

DISPOSITION

The judgment is affirmed. STQ is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ